tion, declarations and the conduct of the parties. But, to raise the presumption of marriage, the reputation must be founded on general, not divided or singular, opinion; and, where the declarations of the parties are relied on, the circumstances under which they are made must determine their value.

2. MARRIAGE—*Proof — Conduct of parties — Presumption.* In the interest of morality and decency the law presumes marriage between a man and woman when they live together ostensibly as man and wife, demeaning themselves towards each other as such, and are received into society and treated by their friends and relatives as having and being entitled to that status. But cohabitation and repute do not constitute marriage. They are only evidence tending to raise a presumption of marriage, and, like other presumptions of fact, may be overcome by countervailing evidence.

3. MARRIAGE—*Declarations and repute contemporaneous with conduct.* The declarations of parties and other attendant circumstances of cohabitation, all which are admissible as parts of the *res gestæ* to prove marriage, must, together with the repute originating therefrom, be contemporaneous with the intercourse, and not subsequent.

4. MARRIAGE—*Matrimonial cohabitation — Presumption.* The presumption of marriage, from cohabitation, apparently matrimonial, is very strong, especially where legitimacy is involved; and this presumption can only be overcome by cogent and satisfactory proof. But to raise this presumption the cohabitation must appear to be a matrimonial cohabitation. Mere cohabitation is not sufficient. It must be attended with such conduct as would justify the repute of the marriage.

5. MARRIAGE—*Particular time and place—Presumption as to other time and place.* If a party undertakes to establish marriage between a man and woman at one time and place, he cannot rely upon other facts and circumstances to raise a presumption of marriage at some other time and place.

NORFOLK & WESTERN RAILWAY CO. v. MARPOLE.—Decided at Richmond, November 16, 1899. *Cardwell*, J.

1. APPEAL AND ERROR—*New trial—Excluding evidence—Harmless error.* A new trial will not be granted for refusal to permit certain evidence to be introduced when substantially the same evidence was received without objection at a later stage of the trial.

2. RAILROADS—*Overhead bridges—Contributory negligence.* It is negligence fo a railroad company to operate its road with an overhead bridge too low for its employees whose duties are on top of the cars, to pass when standing on the cars, in the discharge of their duties, but if an employee knows, or ought to know of the dangerous condition of the bridge, and fails to use ordinary care to protect himself, in consequence of which he is injured, he is guilty of contributory negligence and cannot recover for the injury. The fact that the employee does not know of his exact locality, or the proximity of the bridge by reason of darkness, fog, or other natural or artificial causes incident to his employment is immaterial.

3. APPEAL AND ERROR—*Instructions—Jury sufficiently instructed.*—This court will not reverse for refusal to give an instruction which correctly states the law when another instruction covering the same point has been given in lieu thereof.

4. PERSONAL INJURIES—*Damages—Mental anguish.* In an action to recover damages for personal injuries the jury may take into consideration the mental anguish as well as the physical pain resulting from such injuries.

NATIONAL LIFE ASSOCIATION v. BERKELEY.—Decided at Richmond, November 26, 1899. *Harrison*, J. Absent, *Keith*, P.

1. INSURANCE—*Construction of policy—"Indebtedness" to company—Unearned premiums.* If a plain, unambiguous policy of insurance stipulates that, in consideration of a stated bi-monthly premium, there shall be paid to the beneficiary a given sum upon the death of the insured less any "indebtedness due the company" issuing the policy, such "indebtedness" cannot refer to unearned or unaccrued premiums, but must refer to a real or actual indebtedness that the insured or beneficiary is liable for to the company when the policy matures.

2. INSURANCE—*Restrictive provisions of policy—Sec. 3252 of Code—What must be written or printed in type of prescribed size.* Sec. 3252 of the Code relating to conditions and restrictive provisions of insurance policies is to be liberally construed, in order to fully accomplish the purposes of the act. The words "conditions" and "restrictive provisions" are intended to cover any clause, expression or provision, included in or appended to a policy, whereby the effect of the principal and essential part of the policy is modified, changed, restricted, or otherwise affected, so as to materially influence the rights and liabilities of the insured thereunder. The requirement of the statute that such conditions and restrictive provisions shall be in writing, or printed in type of a given size, is not satisfied by inserting a figure, word, or even a sentence with pen and ink. The whole provision relied on must be in writing or type of the prescribed size, or else it is not available as a defence to an action on the policy.

TOWN OF HARRISONBURG v. ROLLER.—Decided at Richmond, November 16, 1899. *Riely*, J.

1. MUNICIPAL CORPORATIONS—*Changing grade of streets—Consequential damages.* A municipal corporation, when authorized by its charter, may make, improve, open and grade its streets and sidewalks, and if, in so doing, it exercises reasonable care and skill, it is not answerable to the owner of an adjacent lot, whose land is not actually taken, for consequential damages to his premises, unless such liability is created by its charter, or some statute. If there be such damage it is *damnum absque injuria.*

2. MUNICIPAL CORPORATIONS—*Grading streets—Consequential damages—Action at law—Injunction.* If damage results to an adjacent lot owner, from the improper manner in which a municipal corporation executes a lawful work, such damage is not necessarily incident to the accomplishment of the work, and the remedy is by an action at law. Courts of equity cannot interfere by injunction with the exercise in good faith by municipal corporations of discretionary powers conferred upon them by law. The apprehension of the lot-owner that the corporation may not perform a lawful work in a proper manner is no ground for an injunction.

3. MUNICIPAL CORPORATIONS—*Grading streets—Chancery jurisdiction.* Courts of equity are without jurisdiction to fix the grade of streets, or the manner in